

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08HD-174

Hawai'i

Cancellation of General Lease No. S-5640 to the Kona Christian Academy,
Incorporated and Issuance of Direct Lease to Makua Lani Christian School for
Educational Purposes, Papaakoko, Honokohau, 2nd, North Kona, Hawaii Tax Map
Key: 3rd/7-4-06:01.

APPLICANT:

Makua Lani Christian School a Hawaii Non-profit, 501(c) (3) corporation whose business
and mailing address is 74-4947 Mamalahoa Highway, Holualoa, Hawaii 96725.

LEGAL REFERENCE:

Sections 171-13, 171-16 and 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Papaakoko, Honokohau, 2nd, North Kona, Hawaii,
identified by Tax Map Key: 3rd/7-4-06:01, as shown on the attached map labeled
Exhibit A.

AREA:

1.501 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Agriculture- 1 acre (AG-1)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Currently encumbered by General Lease No. S-5640 to Kona Christian Academy, Incorporated, Lessee, for operating and maintaining a school and/or educational purposes. Lease set to expire July 18, 2011.

CHARACTER OF USE:

Operation of a school and related educational purposes.

LEASE TERM:

Forty (40) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Pursuant to HRS §171-43, and the minimum rent policy established by the Board at its meeting of May 13, 2005 under agenda item D-19, the annual rent will be set at \$480.00.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th and 30th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion of or change of use beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

Pay for the costs of public notice pursuant to section 171-16

REMARKS:

General Lease No. S-5640 to the Kona Christian Academy, Incorporated (KCA), covering the subject property was initially approved by the Board of Land and Natural Resources on May 11, 2001, under agenda item D-11. The purpose of the lease was for the operation and maintenance of a school and/or educational purposes.

Given the age and condition of the existing buildings, KCA had requested a ten (10) year lease during which time they planned to operate and maintain the current buildings and facilities. Prior to the end of the ten years, KCA would evaluate their alternatives of constructing new facilities or requesting an extension of the lease in connection with the replacement of the buildings on the current site. During the time of this current lease, KCA has made many improvements to the property, and by letter dated July 5, 2007, asked for an extension of the lease terms for another ten years.

The Makua Lani Christian School (MLCS) is a qualified non-profit corporation and the sister school to Kona Christian Academy, Incorporated. As the MLCS currently utilizes the property for their campus, it was determined that it would be more appropriate for the new lease be under their name. MLCS has provided evidence of 501(c) (3) status and therefore qualifies for a direct lease.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The proposed use is allowable in the county zoning.

The Applicant (through its sister school) has a State lease (General Lease No. S-5640) and is in compliance with all the lease terms and conditions.

Staff has requested information on the Applicant's operations, services, program measurements, budget and funding.

Requests for comments were sent to various Federal, State and County government agencies with no objection or negative comments with regards to this request.

DISCUSSION:

The Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by an appraiser. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501 (c) (1) or 501 (c) (3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c202, §1; am l 1991, c 212, §3]

It is noted that the 501 (c) (1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501 (c) (3) organization is a privately organized charitable organization.

When considering lease dispositions to eleemosynary organizations or religious organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for lease be no less than \$480 per year. Land Division generally issues leases at fair market rental value as determined by an appraiser or via public auction. Staff believes "nominal rent" under section 171-43, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480.

There should be a reasonable and fair market annual rent for all Land Division non-profit tenants. Therefore, staff is recommending the new annual rent be \$480.00.

Based on the request for minimum rent by the applicant, the previous lack of objections from the DOE and no other requests for this property, staff is recommending the Board approve the issuance of a new forty (40) year lease.


RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment. In accordance with the "Division of Land Management's Environmental Impact Statement Exemption

List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion of or change of use beyond that previously existing."

2. Authorize the cancellation of GL S-5640 to the Kona Christian Academy, Incorporated and the issuance of a direct lease to Makua Lani Christian School covering the subject area for school and educational purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. Except for those terms and conditions cited above, the lease shall be in accordance with the standard terms and conditions of the most current non-profit lease form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

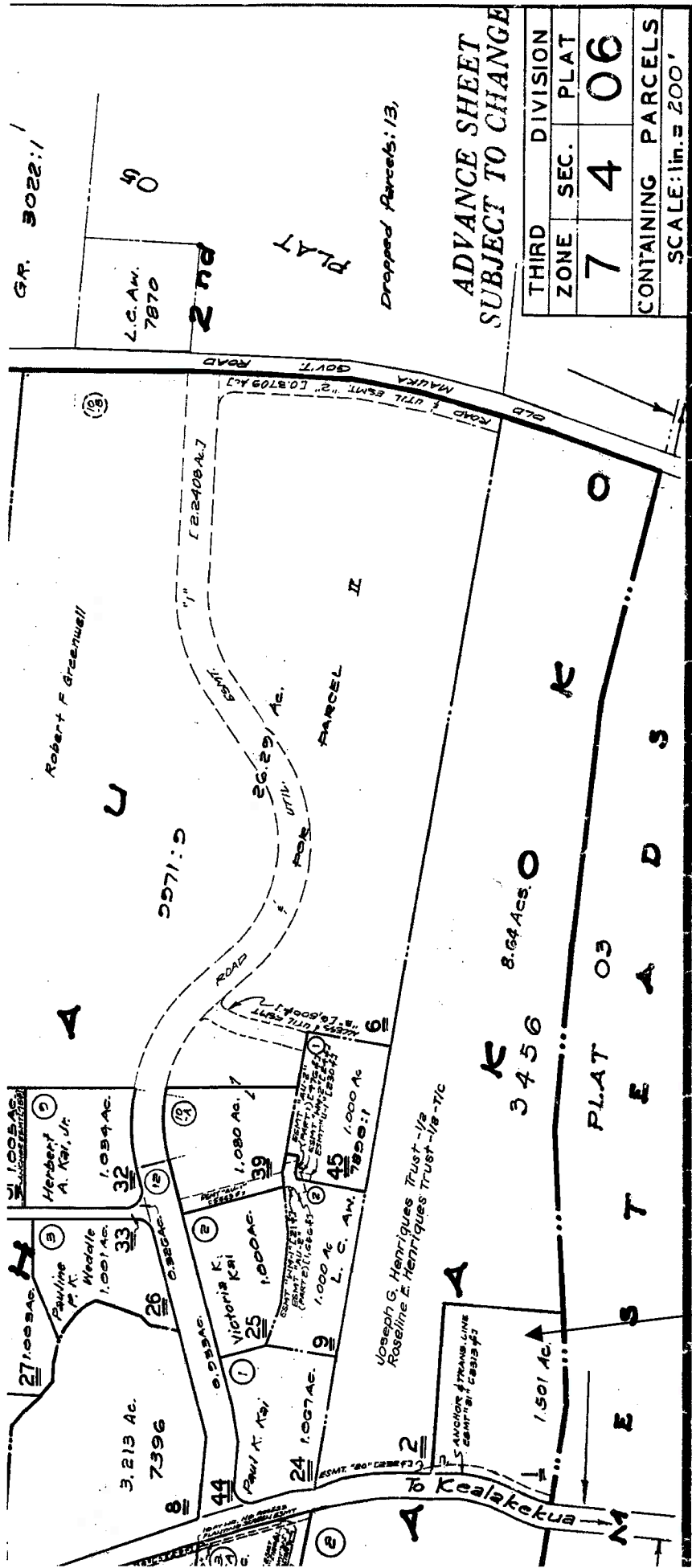


Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



Kona Christian Academy



0 245 490 980 1,470 1,960

Feet



